

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.3147/2007
MP.Nos.1 and 2/2007

K. MUNUSAMY

Petitioner

Vs

- 1 THE STATE ELECTION
COMMISSIONER TAMILNADU STATE ELECTION
COMMISSION NO.6 REVATHY STREET 100 FEET
ROAD VADAPALANI CHENNAI 26
- 2 THE DISTRICT ELECTION OFFICER/
DISTRICT COLLECTOR KRISHNAGIRI DIST
- 3 THE RETURNING OFFICER /
COMMISSIONER PANCHAYAT UNION OFFICE
VEPPANAPALLI KRISHNAGIRI TALK AND DIST
- 4 MANJUNATHAN
THADATHADA VILLAGE N.THASIRAPALLI POST
KRISHNAGIRI TALUK KRISHNAGIRI DIST Respondents

Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent in proceedings in Na.ka.1527/06/A4 dated 18.10.06 and quash the same and consequently direct the respondents 1 to 3 to give effect to the declaration certificate issued to the petitioner dated 18.10.06 and administer oath of office to the petitioner for the post of President of the Naduvanaalli Village Panchayat Krishnagiri District.

For Petitioner : Mr.P.H.Manoj Pandian

For Respondents: Mr.I.Paranthaman, AGP -RR1&2
Mr.K.Ilango, SGP-R3
Mr.J.Ravindran -R4

ORDER

1. The Petitioner and the 4th Respondent had contested for the election of President of Naaduvapalli Village Panchayat held on 13.10.2007 and the counting was held on 18.10.2006 in the Veppanapalli High Secondary School. It is the case of the Petitioner that after the completion of counting of votes and recording the total number of votes secured by each candidate in Form No.22, the 3rd Respondent had announced that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and that thereafter, the 4th Respondent had demanded for recounting, which was accepted and recounting was done, in which also it was declared that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes; that once again one more recounting for the second time was sought for by the 4th Respondent, which was also acceded by the 3rd Respondent; that even in the second recounting, it was confirmed that the Petitioner had secured 1056 votes and the 4th Respondent had secured only 1055 votes and thereafter, the 3rd Respondent had issued declaration certificate as contemplated under Rule 69 of the Tamil Nadu Panchayat (Election) Rules 1995, which was also stated to be communicated to the State Election Commission as well as to the District Election Officer and that on 23.10.2006 at about 6.00 p.m, i.e. the date on which taking oath of office was scheduled by the State Election Commission, the Petitioner came to know that the 3rd Respondent had issued same declaration certificate in favour of the 4th Respondent and hence, this Writ Petition has been filed.
2. The case of the 3rd Respondent is that after completion of counting, it was confirmed that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and hence, declaration certificate was issued by the 3rd Respondent in favour of the Petitioner and that thereafter, the 4th Respondent had demanded for recounting, for which the Petitioner also had agreed to and that in the recounting, the 4th Respondent had secured highest number of votes and hence, the 3rd Respondent had declared that the 4th Respondent had won the election and necessary declaration certificate in Form No.25 was also issued to the 4th Respondent after cancelling declaration certificate issued to the Petitioner.
3. The case of the 4th Respondent is that on 18.10.2006 at about 3.00 p.m, the 3rd Respondent had announced that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and immediately after counting of votes was over, even before the 4th Respondent filing a petition for recounting, the 3rd Respondent had announced that the Petitioner had won the election and issued a declaration certificate and that on seeing the 4th Respondent filing a petition for recounting, the Petitioner also gave a petition for recounting by paying necessary amount of Rs.2,000/- and

that in the recounting, the 4th Respondent had secured two additional votes, in all 1057 votes, whereas the Petitioner had secured 1056 votes and hence, the declaration certificate issued to the Petitioner was cancelled by the 3rd Respondent on the same day itself and a declaration certificate was issued in favour of 4th Respondent.

4. The learned counsel for the respective parties reiterated the said contents following their pleadings.

5. It is submitted by the learned counsel for the Petitioner that recounting was ordered twice prior to the declaration certificate was issued to the Petitioner, in both recounting, it was confirmed that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and thereafter only declaration certificate was issued.

6. The learned counsel for the Petitioner has relied on the judgements reported in N.Vellaichamy Vs. The Returning Officer cum Commissioner, Gandharvakottai, Pudukottai District and others (2003-WLR-634) and Vadivelu Vs. Sundaram and others (2000-8-SCC-355).

7. The learned Special Government Pleader for the 3rd Respondent, relying on the counter, has submitted that after completion of counting, it was found that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and hence, the Petitioner was issued with declaration certificate and in the mean time, the 4th Respondent had demanded for recounting, which was agreed to by all and hence, recounting was ordered. It is the categorical case of the third Respondent that "It is incorrect to state that declaration certificate was issued after recounting and it was issued prior to recounting."

8. The learned counsel for the 4th Respondent has also submitted that the 3rd Respondent had announced on 18.10.06 at about 3.00 p.m that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and immediately, declaration certificate was issued to the Petitioner and that the 4th Respondent had lost the election by one vote, hence he sought for recounting, which was also agreed upon by the Petitioner, as a result of which, recounting was ordered by the 3rd Respondent and that in the recounting, the 4th Respondent had secured 1057 votes and the Petitioner had secured 1056 votes and hence, the declaration certificate issued to the Petitioner was cancelled by the 3rd Respondent on the same day itself.

9. It is necessary to extract the paragraph 2 of the counter filed by the 3rd Respondent, which is as follows:-

"2. The Respondent submitted that the statement of the Petitioner is hereby denied. After the completion of counting, the Petitioner secured 1056 votes and the 4th Respondent secured 1055 votes so, the Petitioner was issued a declaration certificate. In the mean time the 4th Respondent demanded me, to conduct the recount of votes. After careful consideration the recounting was ordered. The Petitioner also agreed for recounting and remitted

the necessary amount for recounting. The certificate was issued for the Petitioner before recounting, not after the recounting as stated by the Petitioner.

The said contents of the said paragraph 2 of the counter of the 3rd Respondent are not disputed by the 4th Respondent. The case of the Petitioner is that after recounting only, declaration certificate was issued. With the available records, this court finds it difficult to give a finding to the said issue.

10. The relevant rules of the Tamil Nadu Panchayat (Elections) Rules 1995 are extracted as under:-

Rule 64(2) of the said Rules contemplates as under:

"After the counting of the votes recorded in all ballot papers contained in all ballot boxes has been completed, the Returning Officer shall have the result of such counting entered in Part II of Form 20 and it shall be signed by the counting supervisor and the Returning Officer. The Returning Officer shall, then, make the entries relating thereto in a result sheet in Form 22."

Rule 66(1) of the said Rules contemplates as under:

"After the completion Plaintiff the counting and recording in Form 22 the total number of votes polled by each candidate under sub rule (2) of the Rule 64, the Returning Officer shall announce the same. After such announcement, and before the declaration of the result of the election, a contesting candidate or in his absence his election agent, may apply in writing to the Returning Officer for a recount of all or any of the votes already counted stating the grounds on which the demands such recount."

Rule 67(2) (a) of the said Rules contemplates as under:

"In the case of election of President of Village Panchayat, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare the contesting candidate to whom the largest number of valid votes have been given and complete and certify the return in Form 23 and send the signed copy thereof to the District Election Officer and the State Election Commission."

Rule 69(3) of the said Rules contemplates as under:

"In the case of election of President of Village Panchayat, the name of the candidate duly elected shall be forwarded in Form 25 by the Returning Officer to the District Election Officer and State Election Commission and the District Election Officer shall cause the same to be published in the District Gazette and shall also be published on the notice boards of the offices of the concerned Village Panchayat and the Panchayat Union."

Rule 68(1) of the said Rules contemplates as under:

"The Returning Officer, shall after declaring the results, retain in his custody or cause to be deposited in the custody of the officer as may be

specified by the State Election Commission, the packets of ballot papers, whether counted, rejected, cancelled or unused, the sealed packets containing the declarations under sub rule (2) of rule 52 and the marked copy of the electoral roll. These packets shall not be opened and their contents shall not be inspected or produced except under the orders of an election or other competent court."

11. This court is of the considered view that Rule 66(1) and 68 of the said Rules are relevant and sufficient to decide the validity or otherwise of the impugned order.

12. In the Rule 66(1), it is clearly mentioned that after such announcement and before the declaration of the result of the election, a contesting candidate or in his absence his election agent, may apply in writing to the Returning Officer for a recount of all or any of the votes already counted stating the grounds on which he demands such recount and hence, recounting, if any, can be ordered only before declaration certificate is issued, whereas, it is alleged by the 3rd Respondent in paragraph 2 of his counter that he had issued declaration certificate in Form No.25 after verification that the Petitioner had secured 1056 votes and the 4th Respondent had secured 1055 votes and thereafter, he ordered for recounting and hence, such recounting is untenable in law.

13. Rule 68 very specifically speaks that once the Returning Officer issued declaration certificate, the package of ballot papers, whether counted or rejected, cancelled or unused, the sealed package containing the declaration and the marked copy of the electoral roll shall remain in his custody or deposit in the custody of the officer. Those packets shall not be inspected or produced except under the orders of election or other competent court. In this case, it is admitted by the 3rd Respondent in paragraph 2 of his counter that he had issued declaration certificate in Form No.25 and thereafter entertained recounting application of the fourth respondent which is patently illegal. Even the consent of the candidates for recounting after declaration cannot cure it.

14. In the case of Vadivelu Vs. Sundaram and others (2000-8-SCC-355) relied on by the learned counsel for the Petitioner, in paragraph 20, it was held as under:-

"20. The appellant election Petitioner in this case has not stated as to when did he file the application for recount. He has stated that he had given an application to the Returning Officer for recounting of votes and the request for recounting was not accepted. At the time of the evidence also, the appellant has not stated as to when did he file the application. In cross examination, he stated that at about 10.00 p.m on 14.10.1996, it was announced through loudspeaker that the 1st Respondent was elected and he denied the allegation that the application for recount was made at 11.45 p.m. The 1st Respondent was examined as RW.1. He deposed that

the result of the election was declared at 10.30 p.m and in all probability, the appellant filed an application for recount after the result of the election was declared. Therefore, the application for recount was not filed in accordance with Rule 66 of the Tamil Nadu Panchayats (Elections) Rules, 1995."

The said judgement of the Honourable Supreme Court is squarely applicable to the facts of the case on hand.

15. The other argument of the Respondents 3 and 4 is that this Writ Petition is not maintainable and that if at all, the Petitioner can approach the competent court by way of election petition. In this regard, the learned counsel for the Petitioner has relied on the judgement of the Apex Court rendered in the case of Jayarajbhai Jayantibha Patel Vs. Anilbha Jayantibhai Patel and others in SLP.No.4663/2006 dated 11.9.2006, wherein in paragraph 18 it was held as under:-

"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision making process and not the decision."

It is clear from above said principle laid down by the Apex Court in the said judgement dated 11.9.2006 that the power of judicial review can be exercised, when administrative decision is illogical or suffers from procedural impropriety or abuse or misuse of power or it shocks the conscience of the court. When applying the above said principle to the facts and circumstances of this case, this court is of the considered view that the act of the 3rd Respondent is contrary to said provisions of law and hence, this Writ Petition is maintainable.

16. In view of the above said discussions, the impugned order is liable to be quashed and accordingly, it is quashed.
17. In the result, this Writ Petition is allowed, as prayed for. No costs. Consequently, the connected MPs are closed.
18. After dictating this order, the learned counsel for the 4th Respondent has requested that this order may be suspended for a period of two weeks from today to enable the 4th respondent to seek further remedy available. Considering the said request, this order is suspended for a period two weeks from today.

Srcm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

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KRISHNAGIRI TALUK KRISHNAGIRI DIST

+ one cc to M/s P.H. Manoj Pandian, Advocate sr no. 46332
+ one cc to M/s. K. Elango, Advocate sr no. 46571
+ one cc to the Government Pleader sr no. 46191

gk(Co)
nm(27.07.07)

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